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January 17, 2002

02-7

VIA HAND DELIVERY

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**REDACTED -
For Public Inspection**

Ms. Magalie Roman Salas
Secretary
Office of the Secretary
Federal Communications Commission
Room TW-B-204
445 Twelfth Street, S.W.
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Vermont

Dear Ms. Salas:

This is the cover letter for the Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Vermont ("the Application").

This Application contains confidential information. We are filing confidential and redacted versions of the Application.

1. The Application consists of (a) a stand-alone document entitled Application by Verizon New England for Authorization To Provide In-Region, InterLATA Services in Vermont ("the Brief"), and (b) supporting documentation. The supporting documentation is organized as follows:

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List A B C D E

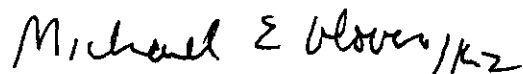
- a. Appendix A includes declarations and attachments thereto in support of the Brief;
 - b. Appendices B through L consist of various materials including selected portions of the Vermont Public Service Board proceedings, third-party OSS evaluations, Carrier-to-Carrier Guidelines, interconnection agreements, and additional supporting documents;
 - c. Appendix M consists of Carrier-to-Carrier reports and Summary Measurements Reports.
2. Specifically, we are herewith submitting for filing:
- a. One original of only the portions of the Application that contain confidential information (in paper form, except for Appendix M, which is being filed only on CD-ROM);
 - b. One original of a redacted Application (in paper form);
 - c. One copy of the redacted Application (in paper form);
 - d. Two CD-ROM sets containing the Brief and the supporting-documentation portion of the redacted Application; and
 - e. Four additional copies of the redacted Application (partly in paper form and partly on CD-ROM, in accordance with the Commission's filing requirements), so that each Commissioner may receive a copy.

3. We are also tendering to you certain copies of this letter and of portions of the Application for date-stamping purposes. Please date-stamp and return these materials.

4. Under separate cover, we are submitting copies (redacted as appropriate) of the Application to Ms. Janice Myles, Policy and Program Planning Division, Common Carrier Bureau, Federal Communications Commission, Room 5-C-327, 455 12th Street, S.W., Washington, D.C. 20554. We are also submitting copies (redacted as appropriate) to the Department of Justice, to the Vermont Public Service Board, and to Qualex (the Commission's copy contractor).

Thank you for your assistance in this matter. If you have any questions, please call me at 703-351-3860 or Steven McPherson at 703-351-3083.

Very truly yours,

A handwritten signature in black ink that reads "Michael E. Glover/kz". The signature is written in a cursive, slightly slanted style.

Michael E. Glover

Encs.

Before the
Federal Communications Commission
Washington, D.C. 20554

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JAN 17 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Application by Verizon New England)
Inc., Bell Atlantic Communications,)
Inc. (d/b/a Verizon Long Distance),)
NYNEX Long Distance Company)
(d/b/a Verizon Enterprise Solutions),)
Verizon Global Networks Inc., and)
Verizon Select Services Inc., for)
Authorization To Provide In-Region,)
InterLATA Services in Vermont)

CC Docket No. 02-7

APPLICATION BY VERIZON NEW ENGLAND
FOR AUTHORIZATION TO PROVIDE IN-REGION,
INTERLATA SERVICES IN VERMONT

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January 17, 2002

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Attachment A: Figures

- Exhibit 1. Verizon's Checklist Compliance Under the 1996 Act
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- Exhibit 7. Growth of Local Competition in Pennsylvania

Attachment B: Required Statements

Attachment C: Detailed Index of Appendices

APPENDICES

Appendix A: Declarations

- Volume 1. Tab A – Declaration of Paul A. Lacouture and Virginia P. Ruesterholz (Competitive Checklist)
- Volume 2. Tab B – Joint Declaration of Kathleen McLean and Raymond Wierzbicki (Operations Support Systems)
- Volume 3. Tab C – Joint Declaration of Elaine M. Guerard, Julie A. Canny, and Beth A. Abesamis (Performance Measurements)
- Tab D – Joint Declaration of V. Louise McCarren, Patrick A. Garzillo, and Michael J. Anglin (Pricing)
- Tab E – Declaration of Susan C. Browning (Section 272 Compliance)
- Tab F – Declaration of Paula L. Brown (Local Competition)

- Appendix B: Selected Portions of the Record of Vermont Public Service Board Docket No. 5936 (Investigation into Entry of New England Telephone and Telegraph Company d/b/a NYNEX into InterLATA Services under Section 271 of the Telecommunications Act of 1996)
- Appendix C: Selected Portions of the Record of Vermont Public Service Board Docket No. 6533 (Application of Verizon New England Inc. d/b/a Verizon Vermont for a Favorable Recommendation To Offer InterLATA Services Under 47 U.S.C. 271)
- Appendix D: Third Party Testing Material
- Appendix E: Selected Portions of the Record of Vermont Public Service Board Docket No. 5713 (Investigation into New England Telephone and Telegraph Company's (NET's) Tariff Filing re: Open Network Architecture, Including the Unbundling of NET's Network, Expanded Interconnection and Intelligent Networks)
- Appendix F: Selected Portions of the Record of Vermont Public Service Board Docket No. 6553 (Investigation into Tariff Filing of Verizon New England Inc., d/b/a Verizon Vermont, Re: Revisions to its Pole Attachments Tariff)
- Appendix G: Selected Portions of the Record of Vermont Public Service Board Docket No. 5900 (Joint Petition of New England Telephone & Telegraph Company d/b/a NYNEX, NYNEX Corporation, and Bell Atlantic Corporation for Approval of a Merger of a Wholly-Owned Subsidiary of Bell Atlantic Corporation into NYNEX Corporation)
- Appendix H: Selected Portions of the Record of Vermont Public Service Board Docket No. 6318 (Investigation of Geographically Deaveraged Unbundled Network Prices)
- Appendix I: Selected Portions of the Record of Vermont Public Service Board Docket No. 6255 (Investigation into the Establishment of Wholesale Service Quality Standards for Providers of Telecommunications Services)
- Appendix J: Selected Interconnection Agreements and Statement of Generally Available Terms and Conditions
- Appendix K: Selected 272 Documents
- Appendix L: Additional Selected Documents
- Appendix M: CLEC-Specific Carrier-to-Carrier Reports, Trend Reports and Summary Measurements Reports
(Appendix M consists of confidential and proprietary data, including CLEC proprietary data; this appendix is being filed only on CD-ROM).

INTRODUCTION AND SUMMARY

The local market in Vermont is open, the checklist is satisfied, and consumers are now entitled to the enormous benefits that experience has shown will follow from Verizon's entry into the long distance business. Verizon's Application to provide interLATA services originating in Vermont should be granted.

The Vermont Public Service Board ("PSB") has reached the very same conclusion based on a "thorough and comprehensive investigation" of Verizon's compliance with the requirements of section 271. Subject to a few conditions to which Verizon already has agreed, the PSB finds that Verizon "has demonstrated its compliance with the requirements of Section 271"; that local markets in Vermont are "open to meaningful competition"; and that Verizon's entry into the long distance market "will provide significant additional public benefit by giving Vermont customers greater choice in that market as well." Based on all of this, the PSB has unanimously decided to "recommend that the Federal Communications Commission approve" Verizon's Application.

These findings are obviously correct. Indeed, this Application presents a clear-cut case for approval because Verizon has taken the same extensive steps to open its local markets in Vermont as it has taken in other Verizon states where the Commission has found that Verizon satisfies all the requirements of the Telecommunications Act of 1996 ("1996 Act" or "Act"). Verizon uses the same systems, processes, and procedures to provide the various checklist items in Vermont as it uses in Massachusetts and throughout the New England states. Moreover, even though Vermont is the *most rural state in the entire country*, it has attracted entry from competing carriers who are using the various checklist items in commercial volumes to compete through all three entry paths available under the Act.

At the same time, Verizon's performance in providing the various checklist items has been excellent across the board. Verizon measures its performance in Vermont under

comprehensive performance measurements adopted by the PSB. These measurements are, with a few minor exceptions, the same as those used in Verizon's 271-approved states. From September through November 2001 — the most recent three-month period for which data are available — volumes were in some instances too small to provide meaningful results.

Nonetheless, during that period Verizon completed on time between 99 and 100 percent of CLECs' interconnection trunks, physical collocation arrangements, unbundled loops (including stand-alone loops, hot-cuts, platforms, and DSL-capable loops), and non-dispatch resale orders.

Verizon's performance also has continued to be strong in Massachusetts, where the systems and processes are the same as those in Vermont, but where volumes are considerably higher. For example, from September through November, Verizon met the intervals for providing interconnection trunks to CLECs more than 97 percent of the time, and for providing physical collocation to CLECs 100 percent of the time. In addition, during that same period in Massachusetts, Verizon provided on time 98 percent of CLECs' stand-alone loops; more than 99 percent of CLECs' network element platforms; nearly 98 percent of CLECs' hot-cuts; more than 99 percent of CLECs' unbundled DSL loops; more than 99 percent of CLECs' line-sharing orders; and more than 99 percent of CLECs' non-dispatch resale orders.

Verizon's real-world experience also is confirmed by an independent third-party test. Verizon's systems were tested by KPMG at the time of its Massachusetts application, where the Commission found that such testing provided "persuasive evidence of [Verizon's] OSS readiness." In addition, PricewaterhouseCoopers ("PwC") has concluded that Verizon's systems in Vermont are the same as those used in Massachusetts and throughout the New England states. Thus, consistent with the Commission's own prior holdings, the findings of KPMG in Massachusetts apply with equal force in Vermont.

Moreover, just as Verizon's performance in Vermont clearly satisfies the requirements of the Act, so do its wholesale rates. The PSB conducted an exhaustive pricing proceeding in which it found that Verizon's rates comply fully with this Commission's TELRIC methodology. Indeed, the loop and non-loop (*i.e.*, switching-related) rates in Vermont are *lower* than the rates that this Commission found TELRIC-compliant in Massachusetts and New York, even though the costs in Vermont are considerably *higher* than the costs in those states. Under the Commission's well-settled precedent — as recently upheld by the D.C. Circuit — that is the end of the matter for purposes of demonstrating compliance with the checklist.

Verizon also is subject to a performance assurance plan in Vermont that parallels the plans in Massachusetts, New York, and Connecticut, which the Commission found provide "strong assurance that the local market will remain open after [Verizon] receives section 271 authorization." The Vermont plan places nearly \$15 million in remedy payments at risk annually in Vermont, which is proportionately the same as the remedy amounts at risk in Massachusetts and New York.

Despite all this, the long distance incumbents and others will no doubt attempt to use this proceeding to generate delay in order to maintain a competitive advantage. Significantly, however, Verizon's opponents raised very few issues during the course of the state proceedings, and none of them related to Verizon's actual performance under the checklist. WorldCom made only one serious claim — that Verizon's wholesale rates are too high — but this claim relies on the same misguided legal and factual arguments that the Commission has rejected numerous times. AT&T's opposition centered on the performance assurance plan. And the only other CLEC to oppose Verizon's Application — CTC — limited its comments primarily to individual

billing disputes that are not relevant to this proceeding, or argued that Verizon should be required to modify its checklist offerings in ways that go beyond the requirements of the Act.

The limited amount of opposition that CLECs raised to Verizon's Application during the course of the state proceeding is hardly surprising. The simple fact is that local markets in Vermont are open, Verizon's performance is excellent, and its Application to provide long distance service should be granted.

Moreover, as the Commission has recognized, Verizon's long distance entry will produce enormous benefits. Indeed, actual experience proves that Verizon's entry will both promote local competition and create significant benefits for customers of long distance service. Local competition has increased dramatically in those in-region states where Verizon and other Bell companies have been authorized to provide long distance service. In New York, for example, local competition exploded after Verizon's entry: competitors in New York served just over one million lines at the time of Verizon's application; today they serve more than three million lines. One independent consumer group has estimated that the increase in *local* competition as a result of Verizon's entry is saving consumers in New York up to *\$400 million per year*. And the Commission itself has concluded that "states with long distance approval show [the] greatest competitive activity."

In addition to prompting the long distance incumbents to enter the local mass market for the first time, Verizon's entry also has allowed it to introduce simpler and less expensive long distance services tailored to benefit the mass-market customers that the incumbents historically have preferred to abandon or ignore. As a result of these innovative new plans, more than 2.1 million customers in New York have switched their long distance service to Verizon. According to the same consumer group mentioned above, the increase in *long distance* competition as a

result of Verizon's entry is saving consumers in New York up to nearly *\$300 million dollars per year*.

By any measure, therefore, Verizon's entry into the long distance market in other states has greatly enhanced both local and long distance competition. Consumers in Vermont — where Verizon's local markets are open to the same degree as in these other states — are now entitled to receive these same benefits.

The Commission should grant this Application.

I. VERIZON'S APPLICATION SATISFIES THE REQUIREMENTS OF SECTION 271(c)(1)(A).

Verizon meets the requirements to file this Application under so-called "Track A." See 47 U.S.C. § 271(c)(1)(A).

Of course, given that Vermont is a small state — indeed, the smallest in Verizon's service territory besides Connecticut, with only about 350,000 switched access lines served by Verizon — the absolute number of lines served by competing carriers in Vermont is necessarily smaller than in other states. As the Commission has emphasized, however, the "size of the presence" of these competitors must be viewed in relation to the size of Vermont. See, e.g., Oklahoma Order ¶ 14 ("Issues concerning the nature and size of the presence of the competing provider require very fact-specific determinations."); see also Connecticut Order ¶ 2 ("this application differs from others considered by the Commission because Verizon serves only two small communities in Connecticut with a total of approximately 60,000 lines.").¹ It is equally important to recognize that Vermont is the most rural state in the entire country, with more than two-thirds of the state's population living in rural areas according to U.S. Census Bureau data.² As the Commission has found, "there may not be significant competition in many high-cost, rural areas."³ Rather, local competition — particularly facilities-based competition — typically

¹ Application by SBC Communications Inc. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Oklahoma, Memorandum Opinion and Order, 12 FCC Rcd 8685 (1997) ("Oklahoma Order"); Application of Verizon New York Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Connecticut, Memorandum Opinion and Order, 16 FCC Rcd 14147 (2001) ("Connecticut Order").

² U.S. Census Bureau, Urban and Rural Population: 1900 to 1990 (rel. Oct. 1995), at <http://www.census.gov/population/censusdata/urpop0090.txt>.

³ Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166,

focuses “on larger business customers in large cities.”⁴

Judged against this background, the requirements of Track A are plainly met. There are at least six competing carriers in Vermont — Adelphia, SoVerNet, AT&T, Z-Tel, Lightship, and OneStar — that are providing service on a facilities basis, including through unbundled network element platforms. See Brown Decl. Att. 1 ¶¶ 25, 28-32. On a collective basis, even by conservative estimates, these six carriers served approximately 4,800 lines — including approximately 290 residential lines — as of December 2001 using facilities they have deployed themselves (including in all cases their own local switches). See id. Att. 1 at Table 1. In addition, as of that same date, these carriers were serving approximately 790 lines — including approximately 60 residential lines — using unbundled network element platforms.⁵ See id. In contrast, as of November, these carriers served approximately 2,000 lines — including 310 residential lines — through resale. See id. Overall, therefore, these competing carriers are

FCC 01-304, ¶ 6 (rel. Nov. 8, 2001); see also Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776, ¶ 324 (1997) (“[I]t is unlikely that there will be competition in a significant number of rural, insular, or high cost areas in the near future.”).

⁴ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, ¶ 291 n.573 (2000) (“UNE Remand Order”); see also FCC, Biennial Regulatory Review 2000 – Staff Report, App. IV, Pt. 54, 15 FCC Rcd 21089, 21266 (2000) (“Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas.”); Ind. Anal. Div., FCC, Local Competition at 2 (Dec. 1998) (“Facilities-based CLECs appear to have concentrated in more urbanized areas.”).

⁵ As the Commission previously has held, lines served through unbundled network elements (including pre-assembled platforms of such elements) qualify as a competitor’s own facilities for the purposes of the Track A requirements. See Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, Memorandum Opinion and Order, 12 FCC Rcd 20543, ¶ 101 (1997) (“Michigan Order”); Joint Application by SBC Communications Inc., et al., for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, Memorandum Opinion and Order, 16 FCC Rcd 6237, ¶¶ 41-42 (2001) (“Kansas/Oklahoma Order”).

providing service on a predominantly facilities-basis to business and residential subscribers. Moreover, just as this is true overall, it also is true of individual carriers.

1. Adelphia Business Solutions. — Adelphia is the CLEC affiliate of Adelphia Cable, one of the largest cable operators in the country, and the largest in Vermont, serving approximately 85 percent of all cable customers in the state. See id. Att. 1 ¶ 23.⁶ Adelphia began providing service in Vermont in 1994 and currently operates a local voice network in Montpelier and a local voice switch in South Burlington. See Brown Decl. Att. 1 ¶¶ 8, 23. According to the general manager of Adelphia's Vermont operations, "[t]his is a very successful operation for us. We are offering services customers haven't been able to get before . . . [Vermont] is a small market, but we have done well in it."⁷ Although the information available to Verizon necessarily understates the number of facilities-based lines, as of December 2001, Adelphia served approximately *** lines — including *** residential lines — either wholly or partially over facilities it deployed itself (including in all cases its own local switches). See Brown Decl. Att. 1 ¶ 25.⁸ As of November 2001, Adelphia was serving only *** lines — all business lines — through resale. See id.

2. SoVerNet. — SoVerNet serves both business and residential customers in Vermont using its own local voice switch. See id. Att. 1 ¶¶ 8, 26.⁹ SoVerNet states that it provides "voice services . . . in Vermont, in areas where we can collocate our equipment in the local Central

⁶ See also Vermont Department of Public Service, Vermont Telecommunications Plan, Aug. 2000, at 3-33.

⁷ Liane H. LaBarba, DSL Breaks the Rural Barrier, Telephony (Apr. 9, 2001).

⁸ Adelphia's interconnection agreement with Verizon was approved in 1999. See App. J, Tab 3.

⁹ SoVerNet's interconnection agreement with Verizon was approved in 2000. See App. J, Tab 7.

Offices.”¹⁰ In July 2001, SoVerNet’s chairman stated that the company’s “telephony product is going to be 80, 85 percent statewide” by the second half of 2001.¹¹ Although the information available to Verizon necessarily understates the number of facilities-based lines, as of December 2001, SoVerNet served approximately *** *** lines — including approximately *** *** residential lines — either wholly or partially over facilities it has deployed itself (including in all cases its own local switches). See Brown Decl. Att. 1 ¶ 26. In contrast, SoVerNet does not appear to serve any customers in Vermont through resale. See id.

3. Z-Tel. — Z-Tel provides service to residential customers in Vermont through unbundled network element platforms. See id. Att. 1 ¶ 30.¹² As of November 2001, the company served approximately *** *** residential lines through such platforms. See Brown Decl. Att. 1 ¶ 30.¹³ In contrast, Z-Tel does not appear to serve any customers in Vermont through resale. See id.

4. OneStar. — OneStar began providing local service in Vermont in November 2000 through resale. See id. Att. 1 ¶ 31. On November 30, 2001, OneStar acquired the local customers of eLEC Communications, which at that time was serving business and residential customers through UNE platforms. See id. As of the end of November 2001, OneStar provided service to approximately *** *** lines — including approximately *** *** residential lines

¹⁰ SoVerNet, SoVerNet – Services, at <http://corp.sover.net/services/services.html>.

¹¹ Q&A: Tony Elliott: From “No” to SoVerNet, Vermont Bus. Mag., July 1, 2001, at 10.

¹² Z-Tel’s interconnection agreement with Verizon was approved in 2001. See App. J, Tab 8.

¹³ While Z-Tel does not appear to serve business customers, the Commission has held that, “when a BOC relies upon more than one competing provider to satisfy [Track A], each such carrier need not provide service to both residential and business customers. The requirements of [Track A] are met if multiple carriers collectively serve residential and business customers.” Application of BellSouth Corporation, et al., for Provision of In-Region, InterLATA Services in Louisiana, Memorandum Opinion and Order, 13 FCC Rcd 20599, ¶ 46 n.126 (1998) (“Second Louisiana Order”).

— through UNE platforms. See id. In contrast, OneStar appears to serve *** lines — including approximately *** residential lines through resale. See id.

Despite all this, some of the long distance carriers or others who have consciously chosen not to enter the residential market may try to argue that the number of facilities-based lines in Vermont is not enough for Track A purposes. But the Commission has expressly refused to impose a market-share requirement (as did Congress before it) and has held that the Track A requirements are satisfied so long as the number of competing lines is not “*de minimis*.” See Sprint Communications Co. v. FCC, Nos. 01-1076 et al., slip op. at 20-21 (D.C. Cir. Dec. 28, 2001) (upholding the Commission’s interpretation of Track A). Accordingly, any such claims cannot be supported by the facts or the law.

First, the total number of facilities-based and residential lines in Vermont is comparable to what the Commission has found acceptable in prior applications. Specifically, the total number of facilities-based lines in Vermont is proportionally equivalent to approximately 70,000 facilities-based lines in Michigan, and the approximately 290 facilities-based residential lines in Vermont is proportionally equivalent to more than 1,000 facilities-based residential lines in Kansas, both of which are far more than the number of competitive lines that the Commission found satisfied Track A in Michigan and Kansas.¹⁴ See Michigan Order ¶¶ 65, 74 n.161, 78 (finding that approximately 22,000 total facilities-based lines and 6,000 residential lines satisfied Track A in Michigan where Ameritech served 5.5 million lines); see also Kansas/Oklahoma Order ¶ 41 (finding that Sprint was a qualifying carrier under Track A); Brief of the Federal

¹⁴ In addition, the total number of residential lines in Vermont is proportionally equivalent to more than 9,000 residential lines in Michigan, which is greater than the number of competitive lines that the Commission found satisfied Track A in that state. See Michigan Order ¶¶ 65, 74 n.161, 78 (finding that approximately 6,000 residential lines satisfied Track A in Michigan).

Communications Commission at 41, Sprint Communications Co. v. FCC, Nos. 01-1076 et al. (D.C. Cir. filed June 14, 2001) (explaining that the “FCC’s conclusion that Sprint qualifies as a competing provider of residential service under Track A” was based on the fact that, by the time SBC filed its application, “Sprint was ‘actively marketing’ its facilities-based residential service in Kansas, and had already billed 56 of its 184 residential customers there”). Moreover, the number of facilities-based residential lines served by at least two of the individual Track A carriers described above also is proportionately equivalent to or greater than the number served by Sprint in Kansas.

Second, for the purposes of qualifying under Track A, the only relevant question under the statute is whether a carrier is a “competing provider,” which the Commission has interpreted as a carrier that provides “an actual commercial alternative to the BOC.” See, e.g., Michigan Order ¶ 77; Oklahoma Order ¶ 14. There is no question that the carriers providing facilities-based service in Vermont provide an actual commercial alternative to Verizon. For example, each appears to be actively offering service to substantial numbers of lines in Vermont today. See Brown Decl. Att. 1 ¶¶ 25, 28-32; Oklahoma Order ¶ 17 (for purposes of Track A, a CLEC becomes a “competing provider” if it moves “beyond the testing phase” and has “actually [entered] the market.”). The four qualifying carriers here serve a total of 4,800 business lines and 655 residential lines, see Brown Decl. Att. 1 ¶¶ 25, 28, 30-31, which demonstrates that they have “actually entered the market,” to use the Commission’s words.

Third, as the Commission has held, it would be inconsistent with congressional intent to focus the Track A inquiry narrowly on facilities-based residential competition. See, e.g., Second Louisiana Order ¶ 48 (“[I]t does not appear to be consistent with congressional intent to exclude a BOC from the in-region, interLATA market solely because the competitors’ service to

residential customers is wholly through resale.”). For that very reason, the Commission has held that it would “likely” consider evidence of residential resale lines in its Track A analysis.

Kansas/Oklahoma Order ¶ 43 n.101. As described above, there are commercial volumes of residential resale lines in Vermont, which further proves that the overall level of residential competition in Vermont is far from *de minimis*.

Finally, the claim that competitors serve only a *de minimis* number of facilities-based lines in Vermont boils down to the shopworn argument that section 271 should be interpreted to include some kind of market-share test. As the Commission has held, however, there is no requirement under Track A “that a new entrant serve a specific market share . . . to be considered a ‘competing provider.’” Michigan Order ¶ 77. Indeed, both “the Senate and House each rejected language that would have imposed such a requirement.” Id.; see also Massachusetts Order ¶ 235.¹⁵ The relevant question under Track A is instead whether there is a carrier that is “in the market and operational (*i.e.*, accepting requests for service and providing such service for a fee).” Michigan Order ¶ 75; see also Massachusetts Order ¶ 225; Sprint, slip op. at 20-21. And as described above, there are multiple carriers in Vermont that easily fit that description.

¹⁵ Application by Verizon New England Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Massachusetts, Memorandum Opinion and Order, 16 FCC Rcd 8988 (2001) (“Massachusetts Order”).

II. VERIZON SATISFIES ALL REQUIREMENTS OF THE COMPETITIVE CHECKLIST IN VERMONT.

Verizon unquestionably satisfies the requirements of the competitive checklist in Vermont. Verizon is making all 14 checklist items available under the legally binding obligations in its interconnection agreements, its Statement of Generally Available Terms (“SGAT”), and (in some cases) its tariffs. See Lacouture/Ruesterholz Decl. ¶ 5.¹⁶ Moreover, Verizon is providing the checklist items in commercial quantities. For example, as of November 2001, Verizon had provided some 15,000 interconnection trunks; 1,500 unbundled loops (including DSL loops and platforms); 15,900 resold lines; 8,500 directory listings; 18,000 ported numbers; and 26 in-service collocation arrangements. See Lacouture/Ruesterholz Decl. ¶¶ 12, 39, 81, 313, 353, 368; Brief Att. A, Ex. 1.

Verizon historically has served Vermont through its Verizon New England operations (formerly known as New England Telephone & Telegraph Company). See McLean/Wierzbicki Decl. ¶ 13. Since before divestiture, Verizon New England has served all of the New England states (Rhode Island, Massachusetts, New Hampshire, Vermont, and Maine) through a common set of operations support systems. See id. With the enactment of the 1996 Act, Verizon was required to develop new wholesale systems for competing carriers, and Verizon has taken part in industry collaborative proceedings supervised by the New York Public Service Commission (“PSC”) to help it develop these systems. See id. ¶ 11. Using input from these proceedings, Verizon developed a common set of interfaces and gateway systems across the entire footprint of the former Bell Atlantic (including the Verizon New England territory), and likewise implemented a common set of processes and procedures. See id.

¹⁶ There currently is no ongoing litigation under 47 U.S.C. § 252(e)(6) that relates to these approved agreements.

Verizon accordingly provides each of the checklist items in Vermont in substantially the same manner and using the same processes and procedures that Verizon uses in Massachusetts, where the Commission found that Verizon satisfies the requirements of the Act in all respects. See Lacouture/Ruesterholz Decl. ¶¶ 7-8; Massachusetts Order ¶ 1. Likewise, it provides those checklist items in Vermont using the same interfaces to access the same underlying OSS as in Massachusetts. See McLean/Wierzbicki Decl. ¶ 11. Indeed, this is not merely a case where the systems used in the two states are the same (in the sense that they are copies of one another). In this case, the systems in Vermont *are* the New England systems, which are the only systems used in Massachusetts and the other New England states. See id. And the Commission has already found that these systems and processes meet all the requirements of section 271. See Massachusetts Order ¶¶ 50, 70, 90, 95, 97, 102.

The significance of this is straightforward: It establishes a presumption that the manner in which Verizon provides the checklist items in Vermont likewise meets the Act's requirements. As the Commission has previously held, where an aspect of an applicant's checklist showing is "materially indistinguishable" from a showing in another state, the Commission will use its prior determination "as a starting point for [its] review" and "review any new data or information" from the parties only "to determine whether a different result is justified." First Louisiana Order ¶¶ 1, 3.¹⁷

Moreover, this presumption is buttressed by the findings of the Vermont PSB. The PSB conducted a "thorough and comprehensive investigation" of Verizon's checklist compliance that

¹⁷ See Application by BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Louisiana, Memorandum Opinion and Order, 13 FCC Rcd 6245, ¶¶ 1, 3 (1998) ("First Louisiana Order"); see also Second Louisiana Order ¶ 56 (where BOC "provides access to a particular checklist item through a region-wide process, such as its OSS, [the Commission] will consider both region-wide and state specific evidence in [its] evaluation of that checklist item").

is entitled to maximum deference under the Commission's well-settled precedent. Letter from Michael H. Dworkin, David C. Coen & John D. Burke, Vermont PSB to V. Louise McCarren, President & CEO, Verizon Vermont, Docket No. 6533, at 1 (Jan. 16, 2002) ("Vermont PSB Approval Letter") (App. L, Tab 21).¹⁸ The formal docket in the PSB's section 271 proceeding has in fact seen submissions totaling thousands of pages from at least five main parties other than Verizon; it involved five days of hearings, filling more than 1,000 pages of transcript. Moreover, the PSB also relied on the extensive work that it performed in other dockets, including a proceeding to establish wholesale rates and one to establish performance measurements. Based on its exhaustive investigation, the PSB determined that, subject to a few conditions to which Verizon already has agreed, Verizon "has demonstrated compliance with its statutory obligations under the Competitive Checklist," and has "taken the appropriate steps to open the local exchange and exchange access markets in Vermont to competition." See id. at 2, 3.

As summarized below, the conclusions of the Vermont PSB are supported by overwhelming evidence.

First, Verizon's actual performance in providing access to each of the 14 checklist items is excellent across the board. During the most recent three-month period for which data are available, volumes in Vermont were in some instances too small to provide meaningful results

¹⁸ See, e.g., Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, Memorandum Opinion and Order, 15 FCC Rcd 3953, ¶ 51 (1999) ("New York Order") ("Given the 90-day statutory deadline to reach a decision on a section 271 application . . . where the state has conducted an exhaustive and rigorous investigation into the BOC's compliance with the checklist, we may give evidence submitted by the state substantial weight."); Application by SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas, Memorandum Opinion and Order, 15 FCC Rcd 18354, ¶ 4 (2000) ("Texas Order") (according state commission decision "substantial weight based on the totality of its efforts and the extent of expertise it has developed on section 271 issues").

under many of the measurements on which the Commission has relied in the past. Nonetheless, from September through November 2001, Verizon completed on time between 99 and 100 percent of CLECs' interconnection trunks, physical collocation arrangements, unbundled loops (including stand-alone loops, hot-cuts, platforms, and DSL-capable loops), and non-dispatch resale orders. See Lacouture/Ruesterholz Decl. ¶¶ 22, 40, 85, 105, 128, 198, 376. Verizon's performance also has continued to be strong in Massachusetts, where the systems and processes are identical to those in Vermont, but where volumes are considerably higher. For example, from September through November, Verizon met the intervals for providing interconnection trunks to CLECs 97 percent of the time, see id. ¶ 23; met the intervals for providing physical collocation to CLECs 100 percent of the time, see id. ¶ 41; and met the intervals for providing access to loops and other unbundled elements in Massachusetts — including the intervals for most major subsets of loops — at least 98 percent of the time, and in many instances 99 percent of the time or more, see id. ¶¶ 86, 106, 129, 199.

Second, Verizon's systems have undergone independent third-party testing that Verizon passed with flying colors. Verizon's systems were tested by KPMG in Massachusetts, where the Commission found that such tests provided "persuasive evidence of Verizon's OSS readiness." Massachusetts Order ¶ 46; see McLean/Wierzbicki Decl. ¶ 15. In addition, Verizon's systems have been subject to an attestation audit by PwC, which verified that the Vermont systems, processes, and procedures are the same as those used in Massachusetts and throughout Verizon's New England region. See McLean/Wierzbicki Decl. ¶ 9. Consistent with the Commission's prior holdings, the results of the KPMG test in Massachusetts therefore apply with equal force in Vermont. See Kansas/Oklahoma Order ¶¶ 3, 107 (concluding that an attestation by Ernst & Young that the systems in Kansas and Oklahoma were the same as those used in Texas "provides

reliable evidence that the OSS systems in Texas are relevant and should be considered in our evaluation of SWBT's OSS in Kansas and Oklahoma").

Third, Verizon reports its performance under measurements that "track Verizon's performance on functions essential to an open, competitive local market." Massachusetts Order ¶ 237; see Guerard/Canny/Abesamis Decl. ¶ 27. Indeed, Verizon uses measurements in Vermont that, with a few minor exceptions, are identical to those used in Massachusetts and New York. See Guerard/Canny/Abesamis Decl. ¶¶ 13-14. Moreover, in Massachusetts, KPMG had previously validated Verizon's performance measurements, concluding that "'Verizon appropriately and accurately captures and reports its performance metrics to CLECs each month.'" Id. ¶ 76 (quoting Transcript of Technical Session at 3390, DTE 99-271 (Aug. 29, 2000) (App. D, Tab 1)); see also Massachusetts Order ¶¶ 44-46. And PwC has verified that Verizon captures and reports its performance measurements the same way in Vermont as it does in Massachusetts. See Guerard/Canny/Abesamis Decl. ¶ 75.

Finally, Verizon is subject to a comprehensive performance assurance plan in Vermont that mirror the plans in Massachusetts and New York. The Vermont plan place nearly \$15 million in remedy payments at risk annually in Vermont, an amount that is proportionately the same as the amounts at risk in Massachusetts and New York, see id. ¶¶ 79, 85, and that the Commission has found provides "assurance that the local market will remain open after Verizon receives section 271 authorization," Massachusetts Order ¶ 236. Consequently, the Vermont plan provide added assurance that Verizon will continue to provide high-quality service to competing carriers.

Despite all this, competitors still will claim that this Application should be denied. Significantly, however, CLECs raised very few issues during the course of the state proceedings

regarding Verizon's compliance with the checklist. Indeed, only one CLEC — CTC — raised any issues regarding Verizon's provision of the various checklist items, but its complaints were limited primarily to individual billing disputes that are not relevant to this proceeding, or argued that Verizon should be required to modify its checklist offerings in ways that go beyond the requirements of the Act.

In any event, the Commission repeatedly has made clear that it will evaluate a BOC's performance "based on the totality of the circumstances," and "an apparent disparity in performance for one measure, by itself, may not provide a basis for finding noncompliance with the checklist," Texas Order ¶ 58, if "the performance demonstrated by all the measurements as a whole" shows parity, Kansas/Oklahoma Order ¶ 32. Similarly, the fact that a measure may appear to reflect such a disparity does not necessarily mean that the applicant has not complied with the checklist if the disparity has "little or no competitive significance," or may be traced to CLEC behavior or other "factors outside of [the applicant's] control." New York Order ¶¶ 59, 202; see also Massachusetts Order ¶ 13 ("We may find that statistically significant differences exist, but conclude that such differences have little or no competitive significance in the marketplace. In such cases, we may conclude that the differences are not meaningful in terms of statutory compliance."); Kansas/Oklahoma Order ¶ 32 ("We may also find that the reported performance data is impacted by factors beyond a BOC's control, a finding that would make us less likely to hold the BOC wholly accountable for the disparity.").

Applying these standards here, it is abundantly clear that the checklist requirements are satisfied.

A. Interconnection (Checklist Item 1).

Verizon provides the same forms of interconnection in Vermont that it provides in Massachusetts, and provides them using the same processes and procedures that it uses in that